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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,744	01/15/2004	Michael James Pratt	9279.79	4294
7590 03/08/2006			EXAMINER	
MICHAEL F KRIEGER KIRTON & McCONKIE 1800 EAGLE GATE TOWER 60 EAST SOUTH TEMPLE SALT LAKE CITY, UT 84111			WEAVER, SUE A	
			ART UNIT	PAPER NUMBER
			3727	
DATE MAILED: 03/08/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/757,744

Applicant(s)

PRATT ET AL.

Examiner

Sue A. Weaver

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-15 and 17-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-9,12-15 and 17-31 is/are allowed.
- 6) ☒ Claim(s) 10,11 and 32-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claim 32 remains rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Contrary to applicants' arguments there doesn't appear to be any description or suggestion for the side panels being made of a material capable of biasing the front panel to the bag as is now claimed in claim 32. Applicants' description supports the biasing element as performing such a function not the side panel.

3. Claims 10, 11 and 32-35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites the limitation "said pocket device" in the end of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 32 recites the limitation "the side panels" in line 5. There is insufficient antecedent basis for this limitation in the claim. A first and second side panel biasing means is set forth in line 4, but no side panels. Furthermore there is insufficient pocket structure set forth in claims 32-34 for the pocket to "seal" as claimed. The term is being treated as "closed" since applicants pocket doesn't appear to "seal" if there are vent opening provided.

4. Claims 32 and 34, insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Bieber et al in view of T. Johnson '071 in the manner set forth in the office action of 3/8/05 and further in view of Slobotkin '940.

To have disposed the biasing rod such that it extends along the edge of the pocket would have been obvious in view of the teaching of Slobotkin at 48. Since the front wall of the pocket of Bieber et al is urged to the back wall the pocket will inherently close.

5. Claim 32 insofar as it is supported and definite, is rejected under 35 U.S.C. 103(a) as being unpatentable over Chi '120.

Note that the pockets of Chi may have elastic gussets which define side panels with material for compressing the front of the pocket towards the back inherently closing the pocket.

6. Claim 33, insofar as it is definite, is again rejected under 35 U.S.C. 103(a) as being unpatentable over Bieber et al 340 for the reasons set forth in paragraph 7 of the previous office action.

7. Claims 33 and 35 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Appel '624 in view of Chi for the reasons set forth in paragraph 8 of the previous Office action.

8. Claims 1, 3-9, 12-15 and 17-31 are allowed while claims 2 and 16 have been canceled.

9. Claims 10 and 11 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

10. Applicant's arguments with respect to claims 32-35 have been considered but are moot in view of the new ground(s) of rejection.

11. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the pocket being sealed to prevent items from falling out if the bag is turned upside down) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

It would appear that applicants' pocket construction is not in fact sealed with vent opening and whether or not items fall out would depend on the weight and size of those items and the extent of the biasing force. Applicants do not appear to have any support for such allegations.

12. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday from 6 to 4:30.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SW

  
**SUE A. WEAVER**  
**PRIMARY EXAMINER**  
**GROUP 3300**